

\_\_\_\_\_ BILL NO. \_\_\_\_\_

INTRODUCED BY \_\_\_\_\_  
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING FREEDOM OF CONSCIENCE IN PROVIDING PHARMACEUTICAL SERVICES; PROVIDING DEFINITIONS; PROVIDING REMEDIES; AMENDING SECTIONS 37-1-105, 37-1-136, 37-1-303, 37-1-307, 37-1-308, 37-1-402, AND 50-5-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short Title.** [Sections 1 through 6] may be known as the "Pharmaceutical Care Freedom of Conscience Act".

NEW SECTION. **Section 2. Legislative findings and purpose.** (1) It is the public policy of this state to respect and protect the fundamental right of conscience of all individuals, organizations, and entities that prescribe, provide, administer, dispense, refer for, or participate or assist in providing or administering pharmaceuticals.

(2) Without comprehensive protection, the rights of conscience of pharmaceutical providers and pharmaceutical institutions may be violated by actions including but not limited to harassment, hiring discrimination, demotion, salary reduction, transfer, termination, loss of staffing privileges, denial of aid or benefits, and refusal to license or certify.

(3) It is the purpose of [sections 1 through 6] to protect as a basic civil right the right of all pharmaceutical providers and pharmaceutical institutions to decline to prescribe, provide, administer, dispense, refer for, counsel on behalf of, or assist in the administration or provision of any pharmaceutical product, drug, device, medication, or service that violates their consciences. These pharmaceutical services may include but are not limited to abortifacients and medications used for artificial contraception, sterilization, artificial insemination, assisted reproduction, euthanasia, and physician-assisted suicide.

(4) It is the purpose of [sections 1 through 6] to prohibit all forms of discrimination, disqualification, coercion, disability, or liability against pharmaceutical providers and pharmaceutical institutions that decline to perform any pharmaceutical service that violates their consciences.

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2        **NEW SECTION.** **Section 3. Definitions.** As used in [sections 1 through 6], the following definitions  
3 apply:

4            (1) (a) "Conscience" means the religious, moral, or ethical principles held by a pharmaceutical provider  
5 or pharmaceutical institution.

6            (b) A pharmaceutical institution's conscience is determined by reference to its existing or proposed  
7 religious, moral, or ethical guidelines, mission statement, constitution, bylaws, articles of incorporation, or other  
8 relevant documents.

9            (2) "Device" means any instrument, apparatus, or contrivance intended:

10            (a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans; or

11            (b) to affect the structure or any function of the human body.

12            (3) "Participate in a pharmaceutical service" means to prescribe, provide, dispense, administer, counsel  
13 on behalf of, refer for, or participate or assist in providing a pharmaceutical or pharmaceutical service.

14            (4) "Pharmaceutical" means any product, drug, device, or medication that must be prescribed by a  
15 licensed practitioner with prescribing authority or obtained at a pharmaceutical institution.

16            (5) "Pharmaceutical institution" means any public or private organization, corporation, partnership, sole  
17 proprietorship, association, agency, network, joint venture, or other entity that is involved in providing  
18 pharmaceutical services, including but not limited to:

19            (a) a pharmacy;

20            (b) a hospital, clinic, medical center, or outpatient center for surgical services as defined in 50-5-101;

21            (c) a private physician's office;

22            (d) a long-term care facility as defined in 50-5-101;

23            (e) a university medical, pharmaceutical, or nursing school or a medical, pharmaceutical, or nursing  
24 training facility; or

25            (f) any other institution or location where a pharmaceutical service is provided to any person.

26            (6) "Pharmaceutical provider" means an individual who may be asked to participate in any way in a  
27 pharmaceutical service, including but not limited to:

28            (a) a pharmacist licensed pursuant to Title 37, chapter 7, a pharmacy owner, or an employee of a  
29 pharmacy;

30            (b) a physician, physician assistant, or medical assistant licensed or regulated pursuant to Title 37,

chapter 3;

(c) a nurse or medication aide licensed or regulated pursuant to Title 37, chapter 8;

(d) a nurse aide certified by the department of public health and human services;

(e) an employee of a hospital, clinic, or long-term care facility;

(f) a researcher;

(g) a faculty member or student of a medical, nursing, or pharmaceutical school;

(h) a counselor or social worker; or

(i) any professional, paraprofessional, or any other person who provides or assists in dispensing or administering pharmaceuticals.

(7) "Pharmaceutical service" means any phase of patient pharmaceutical care, treatment, or procedure, including but not limited to:

(a) prescribing, providing, dispensing, or administering a pharmaceutical; or

(b) patient referral, counseling, therapy, testing, or any other care or treatment by pharmaceutical providers or pharmaceutical institutions relating to prescribing, providing, administering, or dispensing any pharmaceutical.

**NEW SECTION. Section 4. Freedom of conscience of pharmaceutical providers -- immunity -- discrimination prohibited.** (1) A pharmaceutical provider has the right to not participate in a pharmaceutical service that violates the provider's conscience. A pharmaceutical provider may not be required to participate in a pharmaceutical service that violates the provider's conscience.

(2) (a) A pharmaceutical provider who declines to participate in a pharmaceutical service that violates the provider's conscience may not be held civilly, criminally, or administratively liable for the pharmaceutical provider's decision.

(b) The civil immunity provisions of this subsection (2) do not apply to a pharmaceutical provider employed by the state or a political subdivision of the state.

(3) It is unlawful for a person, a pharmaceutical provider, a pharmaceutical institution, a public or private institution, a public official, or a board that certifies competency in health care specialties to discriminate in any manner against a pharmaceutical provider based on the pharmaceutical provider's decision to decline to participate in a pharmaceutical service that violates the pharmaceutical provider's conscience. Discrimination includes but is not limited to:

- 1 (a) termination;
- 2 (b) transfer;
- 3 (c) refusal of staff privileges;
- 4 (d) refusal of board certification;
- 5 (e) adverse administrative action;
- 6 (f) demotion;
- 7 (g) loss of career specialty;
- 8 (h) reassignment to a different shift;
- 9 (i) reduction of wages or benefits;
- 10 (j) discrimination in hiring;
- 11 (k) refusal to award any grant, contract, or other program;
- 12 (l) refusal to provide training opportunities; or
- 13 (m) any other penalty or disciplinary or retaliatory action.

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15 **NEW SECTION. Section 5. Freedom of conscience of pharmaceutical institutions -- immunity --**

16 **discrimination prohibited.** (1) A pharmaceutical institution has the right to not participate in a pharmaceutical  
17 service that violates the pharmaceutical institution's conscience. A pharmaceutical institution may not be required  
18 to participate in a pharmaceutical service that violates its conscience.

19 (2) (a) A pharmaceutical institution that declines to provide or participate in a pharmaceutical service that  
20 violates its conscience may not be held civilly, criminally, or administratively liable if the pharmaceutical institution  
21 posts information in a clearly visible location where pharmaceuticals are dispensed that it does not participate  
22 in pharmaceutical services that violate its conscience.

23 (b) The civil immunity provisions of this subsection (2) do not apply to a pharmaceutical institution  
24 operated by the state or a political subdivision of the state.

25 (3) It is unlawful for a person, public or private institution, or public official to discriminate in any manner  
26 against a pharmaceutical institution or a person, association, corporation, or other entity attempting to establish  
27 a new pharmaceutical institution or to operate an existing pharmaceutical institution because the pharmaceutical  
28 institution or person, association, corporation, or entity declines to participate in a pharmaceutical service that  
29 violates the conscience of the pharmaceutical institution, person, association, corporation, or entity. Discrimination  
30 includes but is not limited to denial, deprivation, or disqualification with respect to:

1 (a) licensure;

2 (b) any aid, assistance, benefit, or privilege, including staff privileges; and

3 (c) any authorization, including authorization to create, expand, improve, acquire, or affiliate or merge  
4 with a pharmaceutical institution.

5 (4) It is unlawful for any public official, agency, institution, or entity to deny any form of aid, assistance,  
6 grants, or benefits or in any other way to coerce, disqualify, or discriminate against a person, association,  
7 corporation, or other entity attempting to establish a new pharmaceutical institution or operating an existing  
8 pharmaceutical institution because the proposed or existing pharmaceutical institution declines to participate in  
9 a pharmaceutical service contrary to the pharmaceutical institution's conscience.

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11 **NEW SECTION. Section 6. Civil remedies -- minimum penalties.** (1) A civil action for damages,  
12 injunctive relief, or both may be brought for a violation of [sections 1 through 6]. It is not a defense to any claim  
13 arising out of a violation of [sections 1 through 6] that the violation was necessary to prevent additional burden  
14 or expense on another pharmaceutical provider or pharmaceutical institution, a health care payor, an individual,  
15 or a patient.

16 (2) (a) An individual, association, corporation, entity, or pharmaceutical institution injured by a public or  
17 private individual, association, agency, entity, or corporation by any conduct prohibited by [sections 1 through 6]  
18 may bring a civil action. Upon the finding of a violation under [sections 1 through 6], the aggrieved party is entitled  
19 to recover:

20 (i) three times the actual damages sustained, including pain and suffering;

21 (ii) the costs of bringing the action; and

22 (iii) reasonable attorney fees.

23 (b) Damages awarded under this section may be no less than \$5,000 for each violation, plus the costs  
24 of bringing the action and reasonable attorney fees.

25 (c) Damages awarded under this section are cumulative and not exclusive of other remedies afforded  
26 under any other state or federal law.

27 (3) In a civil action brought pursuant to this section, the court may award injunctive relief, including but  
28 not limited to ordering reinstatement of a pharmaceutical provider to the pharmaceutical provider's prior job  
29 position.

1           **Section 7.** Section 37-1-105, MCA, is amended to read:

2           **"37-1-105. Reporting disciplinary actions against licensees -- exception.** (1) The department has  
3 the authority and shall require that all boards and department programs require each applicant for licensure or  
4 renewal to report any legal or disciplinary action against the applicant that relates to the propriety of the  
5 applicant's practice of or fitness to practice the profession or occupation for which the applicant seeks licensure.  
6 Failure to furnish the required information, except pursuant to 37-1-138, or the filing of false information is  
7 grounds for denial or revocation of a license.

8           (2) An action taken against a pharmaceutical provider or pharmaceutical institution, as defined in [section  
9 3], for exercising the pharmaceutical provider's or pharmaceutical institution's right of pharmaceutical care  
10 freedom of conscience pursuant to [sections 1 through 6] may not be considered a legal or disciplinary action and  
11 is not reportable for purposes of this section."

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13           **Section 8.** Section 37-1-136, MCA, is amended to read:

14           **"37-1-136. Disciplinary authority of boards -- exceptions -- injunctions.** (1) Subject to 37-1-138,  
15 each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary  
16 action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

- 17           (a) revocation of a license;  
18           (b) suspension of its judgment of revocation on terms and conditions determined by the board;  
19           (c) suspension of the right to practice for a period not exceeding 1 year;  
20           (d) placing a licensee on probation;  
21           (e) reprimand or censure of a licensee; or  
22           (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers  
23 proper.

24           (2) Any disciplinary action by a board ~~shall~~ must be conducted as a contested case hearing under the  
25 provisions of the Montana Administrative Procedure Act.

26           (3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from  
27 engaging in the practice of the occupation or profession regulated by the board until a license to practice is  
28 procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

29           (4) An action may not be taken against a person who is in compliance with Title 50, chapter 46, or who  
30 is exercising the person's right of pharmaceutical care freedom of conscience pursuant to [sections 1 through 6].

(5) Rules adopted under subsection (1) must provide for the provision of public notice as required by 37-1-311."

**Section 9.** Section 37-1-303, MCA, is amended to read:

**"37-1-303. Scope.** This part governs the licensure, the practice and unauthorized practice, and the discipline of professions and occupations governed by this title unless otherwise provided by statutes relating to a specific board and the profession or occupation it regulates or by [sections 1 through 6]. The provisions of this chapter must be construed to supplement the statutes relating to a specific board and the profession it regulates. The method for initiating and judging a disciplinary proceeding, specified in 37-1-307(1)(d), must be used by a board in all disciplinary proceedings involving licensed professionals."

**Section 10.** Section 37-1-307, MCA, is amended to read:

**"37-1-307. Board authority.** (1) ~~A~~ Except as provided in subsection (2), a board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas requiring the attendance of witnesses or the production of documents and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(e) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) A board may not take an action allowed under subsection (1) if a licensee or applicant for a license

1 was acting pursuant to [sections 1 through 6].

2 ~~(2)~~(3) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the  
3 purpose of obtaining confidential criminal justice information, as defined in 44-5-103, regarding the board's  
4 licensees and license applicants and regarding possible unlicensed practice, but the board may not record or  
5 retain any confidential criminal justice information without complying with the provisions of the Montana Criminal  
6 Justice Information Act of 1979, Title 44, chapter 5.

7 ~~(3)~~(4) A board may contact and request information from the department of justice, which is designated  
8 as a criminal justice agency within the meaning of 44-5-103, for the purpose of obtaining criminal history record  
9 information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

10 ~~(4)~~(5) (a) A board that is statutorily authorized to obtain a criminal background check as a prerequisite  
11 to the issuance of a license shall require the applicant to submit fingerprints for the purpose of fingerprint checks  
12 by the Montana department of justice and the federal bureau of investigation.

13 (b) The applicant shall sign a release of information to the board and is responsible to the department  
14 of justice for the payment of all fees associated with the criminal background check.

15 (c) Upon completion of the criminal background check, the department of justice shall forward all criminal  
16 history record information, as defined in 44-5-103, in any jurisdiction to the board as authorized in 44-5-303.

17 (d) At the conclusion of any background check required by this section, the board must receive the  
18 criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the  
19 criminal background check report, the department of justice shall promptly destroy the fingerprint card of the  
20 applicant.

21 ~~(5)~~(6) Each board shall require a license applicant to provide the applicant's social security number as  
22 a part of the application. Each board shall keep the social security number from this source confidential, except  
23 that a board may provide the number to the department of public health and human services for use in  
24 administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of  
25 contingency--sec. 1, Ch. 27, L. 1999.)"

26  
27 **Section 11.** Section 37-1-308, MCA, is amended to read:

28 **"37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions. (1)**  
29 Except as provided in subsections (4) ~~and (5)~~ through (6), a person, government, or private entity may submit  
30 a written complaint to the department charging a licensee or license applicant with a violation of this part and



1 specifying the grounds for the complaint.

2 (2) If the department receives a written complaint or otherwise obtains information that a licensee or  
3 license applicant may have committed a violation of this part, the department may, with the concurrence of a  
4 member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable  
5 cause to believe that the licensee or license applicant has committed the violation.

6 (3) A person or private entity, but not a government entity, filing a complaint under this section in good  
7 faith is immune from suit in a civil action related to the filing or contents of the complaint.

8 (4) A person under legal custody of a county detention center or incarcerated under legal custody of the  
9 department of corrections may not file a complaint under subsection (1) against a licensed or certified provider  
10 of health care or rehabilitative services for services that were provided to the person while detained or confined  
11 in a county detention center or incarcerated under legal custody of the department of corrections unless the  
12 complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

13 (5) A complaint may not be filed under this part against a pharmaceutical provider or a pharmaceutical  
14 institution, as defined in [section 3], for exercising the pharmaceutical provider's or pharmaceutical institution's  
15 right of pharmaceutical care freedom of conscience pursuant to [sections 1 through 6].

16 ~~(5)~~(6) A board member may file a complaint with the board on which the member serves or otherwise  
17 act in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board if the  
18 board member determines that there are reasonable grounds to believe that a particular statute, rule, or standard  
19 has been violated."

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21 **Section 12.** Section 37-1-402, MCA, is amended to read:

22 **"37-1-402. Unprofessional conduct -- complaint -- investigation -- exception -- immunity.** (1) A  
23 Except as provided in subsection (3), a person, government, or private entity may submit a written complaint to  
24 the department charging a licensee or license applicant with a violation of this part and specifying the grounds  
25 for the complaint.

26 (2) If the department receives a written complaint or otherwise obtains information that a licensee or  
27 license applicant may have violated a requirement of this part, the department may investigate to determine  
28 whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

29 (3) A complaint may not be filed under this part against a licensee or a license applicant for exercising  
30 the licensee's or applicant's pharmaceutical care freedom of conscience pursuant to [sections 1 through 6].

1           ~~(3)~~(4) A person or private entity, but not a government entity, filing a complaint under this section in good  
2 faith is immune from suit in a civil action related to the filing or contents of the complaint."  
3

4           **Section 13.** Section 50-5-111, MCA, is amended to read:

5           **"50-5-111. Prohibited activities.** (1) It is unlawful to:

6           ~~(1)~~(a) operate a facility without a license;

7           ~~(2)~~(b) prevent, interfere with, or impede department investigation, department enforcement, department  
8 examination of relevant books and records, or activities of the department concerning the preservation of  
9 evidence; or

10           ~~(3)~~(c) violate any provision of part 1 or 2 of this chapter or violate a rule, license provision, or order  
11 adopted or issued pursuant to part 1 or 2.

12           (2) A pharmaceutical institution, as defined in [section 3], that is exercising its pharmaceutical care  
13 freedom of conscience pursuant to [sections 1 through 6] is not in violation of this section."  
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15           NEW SECTION. **Section 14. Codification instruction.** [Sections 1 through 6] are intended to be  
16 codified as an integral part of Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [sections 1  
17 through 6].  
18

19           NEW SECTION. **Section 15. Severability.** If a part of [this act] is invalid, all valid parts that are  
20 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
21 the part remains in effect in all valid applications that are severable from the invalid applications.  
22

23           NEW SECTION. **Section 16. Effective date.** [This act] is effective on passage and approval.  
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